Supreme Court, U.S.
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No. 03-75

In The

Supreme Court of the United States

ETHEL KING KNIGHT A/K/A ANNIE ETHEL KING,

Petitioner,

v.

CITY OF BAINBRIDGE, GEORGIA,

Respondent.

On Petition For A Writ Of Certiorari To The Georgia Supreme Court

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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PERCEIVED MISSTATEMENT OF FACTS OR LAW IN THE PETITION THAT BEARS ON WHAT ISSUES WOULD PROPERLY BE BEFORE THE COURT IF CERTIORARI WERE GRANTED

Petitioner states the "Question Presented" as follows:

> "Whether the zoning ordinance of the City of Bainbridge, Georgia which ***for safety reasons, based entirely upon construction standards***, restricts the placement of HUD stickered manufactured housing units within the corporate limits of the City to mobile home parks and/or mobile home subdivisions is constitutional." (Emphasis supplied)

The inclusion of the words "for safety reasons, based entirely upon construction standards" in Petitioner's "Question Presented" constitute to Respondent a "perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted." (U.S. Supreme Court Rule 15)

This conclusion of Respondent is based on the following Findings of Fact by the Trial Court or by the Supreme Court of Georgia:

(a) Trial Court:

FINDINGS OF FACT:

(1) Findings of Fact No. 30 – Page 20a of Petition for Writ of Certiorari: "Even with a proper application to the City of Bainbridge, a permit will not be issued for any house that does not comply with all of the City of Bainbridge building codes to be placed in any residential zone in the City of Bainbridge, ***with***

the single exception in favor of mobile homes with the HUD sticker and, upon proper application to the City of Bainbridge, mobile homes with the HUD sticker can be placed in mobile home subdivisions or in mobile home parks (T., pg. 106, line 10 thru pg. 108, line 1), ***even though they do not comply with the City of Bainbridge's building codes***." (Emphasis supplied)

(2) Findings of Fact No. 32 – Page 21a of the Petition for Writ of Certiorari: "The Zoning Ordinances of the City of Bainbridge ***do not address the subject of quality of manufacture of mobile homes independent of the DCA and HUD sticker provisions*** (T., pg. 115, lines 6-9)." (Emphasis supplied)

CONCLUSIONS OF LAW:

(1) Conclusions of Law No. 4 – Page 23a of the Petition for Writ of Certiorari: "The Court is aware of the *Scurlock v. City of Lynn Haven, Fla.*, 858 F.2d 1521 (11th Cir. 1988) decision, but it appears that *Scurlock* does not apply in this case. ***The City of Bainbridge has not imposed greater safety requirements for a mobile home than the HUD standards and requirements***; therefore, *Scurlock* does not apply in this case." (Emphasis supplied)

(2) Conclusions of Law No. 5 – Page 23a of the Petition for Writ of Certiorari: "The preemption doctrine does not apply

since ***the City of Bainbridge's ordinances do not conflict with any HUD requirements nor deal with construction and safety and do not impose any additional requirements on a home with a HUD sticker***. See *Scurlock* at 1524." (Emphasis supplied)

(b) Supreme Court of Georgia [*King v. City of Bainbridge*, 276 Ga. 484 (577 S.E.2d 772) (2003)]:

(1) Page 3a of the Petition for Writ of Certiorari: "Thus, any attempt to place higher construction standards on mobile homes than those established under the Act is invalid. ***However, nothing in the Act prevents localities from excluding mobile homes from certain zoning districts***. The City's zoning ordinance creates such an exclusion. Under the City's ordinance, mobile homes must bear the HUD certification label and these homes are specifically excluded from the R-2 zoning district: 'Permitted uses. (a) Any use permitted in the R-1 residential district, except mobile homes.' ***By excluding HUD-certified mobile homes from the R-2 district, the City has not imposed any safety or construction requirement on the homes, but has simply determined that this type of housing is inappropriate in an R-2 district***." (Emphasis supplied)

(2) Page 3a of the Petition for Writ of Certiorari: "***Because the City has not***

infringed on the federal government's control over safety and construction standards for mobile homes, its zoning ordinance is not preempted by the Act." (Emphasis supplied)

(3) Page 4a of the Petition for Writ of Certiorari: "Thus, a modular home is not simply a mobile home with a DCA sticker; instead modular homes and mobile homes are distinct uses, which both the state and federal statutes recognize, and the City's different treatment of them in its zoning ordinance is not an infringement on federal safety standards for mobile homes."

(4) Page 5a of the Petition for Writ of Certiorari: "***The City does not rely on its safety codes, as Lynn Haven did, but instead excludes HUD-certified mobile homes from R-2 districts regardless of safety and construction standards.***" (Emphasis supplied)

(5) Page 7a of the Petition for Writ of Certiorari: "The evidence in this case showed that the City's purpose in restricting mobile home placement was ***to regulate the quality of housing stock and promote general safety concerns.*** These reasons are not arbitrary or unreasonable and bear a substantial relation to the public health, safety, and general welfare. Therefore, the City's ordinance is not unconstitutional." (Emphasis supplied)

The above quoted Findings of Fact and Conclusions of Law by the Supreme Court of Georgia and by the Trial Court indicate to Respondent that the statement by Petitioner in the "Question Presented" [Page (i) of the Petition for Writ of Certiorari] that the placement of HUD stickered manufactured housing units within the corporate limits of the City of Bainbridge to mobile home parks and/or mobile home subdivisions was ***"based entirely upon construction standards"*** is a "perceived misstatement of facts or law in the Petition that bears on what issues properly would be before the Court if certiorari were granted." (U.S. Supreme Court Rule 15.2)

This is particularly true, considering the above Finding of Fact made by the Supreme Court of the State of Georgia that "The City does not rely on its safety codes, as Lynn Haven did, but instead excludes HUD-certified mobile homes from R-2 districts ***regardless of safety and construction standards***." (Pg. 5a of Petition for Writ of Certiorari) (Emphasis supplied) And the concluding paragraph of the Judgment of the Supreme Court of Georgia that "The evidence in this case showed that the City's purpose in restricting mobile home placement was ***to regulate the quality of housing stock and promote general safety concerns***. These reasons are not arbitrary or unreasonable and bear a substantial relation to the public health, safety, and general welfare. Therefore, the City's ordinance is not unconstitutional." (Pg. 7a of Petition for Writ of Certiorari) (Emphasis supplied)

REASON FOR DENYING THE WRIT

The Trial Court, the Supreme Court of Georgia, and Respondent acknowledges that the regulation of construction standards for mobile homes bearing a HUD sticker has been preempted by Federal law and regulations, but denies that Respondent has made any effort to regulate construction standards of mobile homes. As noted by the Supreme Court of Georgia in its decision in this matter "The City does not rely on its safety codes, as Lynn Haven did, but instead excludes HUD-certified mobile homes from R-2 districts ***regardless of safety and construction standards***." (Pg. 5a of Petition for Writ of Certiorari) (Emphasis supplied)

The Supreme Court of Texas in *City of Brookside Village v. Homer N. Comeau, et ux.*, 633 SW2d 790, at pg. 796, states:

> "The referenced state and federal regulation has, to an extent, preempted the field as to ***construction, safety, and installation*** of mobile homes. We find nothing in the statutes, however, that creates a conflict with Brookside Village ordinance regulating the ***location*** of mobile homes. Accordingly, Ordinances 58 and 78, insofar as they do not pertain to the subject matter of the regulation under the Federal and State acts are upheld as compatible with Federal and State legislations."

(Emphasis supplied.) ***The same is true of the Zoning Ordinance of the City of Bainbridge. The City of Bainbridge Zoning Ordinance regulates the location of mobile homes, and not the construction, safety, and installation of mobile homes.***

It is interesting to note that the Supreme Court of the United States denied the petition of Homer N. Comeau for

writ of certiorari to the Supreme Court of Texas. (459 U.S. 1087, 103 S.Ct. 570)

In *Burton v. The City of Alexander City, Alabama*, 2001 WL 527415 (M.D. Ala. 2001) cited by Petitioner in both her brief to the Supreme Court of Georgia and to this Court, the Court stated:

> "But while Scurlock's holding is broad, it cannot be stretched as far as Plaintiffs would like. Plaintiffs, in effect, contend that the 1974 Act prevents a community from using zoning ordinances to limit the siting of manufactured homes within its jurisdiction. ***This argument is untenable. Neither the Act nor the regulations extinguish the time-honored ability of local communities to regulate the placement of a home without regard to the federally-required construction and safety standards for the home itself.***" (Emphasis supplied.)

Respondent has not overlooked the comment on page 4 of the Petition for Writ of Certiorari that indicates that the Ordinance in question might represent "a prejudice based upon economic capacity against those poor people who cannot afford better" (Pg. 4 of Petition for Writ of Certiorari) and has not overlooked the statement in the Conclusion of the Petition for Writ of Certiorari suggesting that the United States Supreme Court should consider the matter "to protect the home ownership rights of poor people." (Pg. 6 of Petition for Writ of Certiorari) Respondent has not addressed these statements as they were not raised in the pleadings, ruled on by the Trial Court, or either considered or ruled upon in the decision of the

Supreme Court of Georgia, which is the subject of this Petition for Writ of Certiorari.

CONCLUSION

Therefore, because the Courts below have properly interpreted the law, as demonstrated by the opinions below, that there is no factual or legal basis for the Petitioner's claims, the Respondent respectfully requests this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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